Chin Foh Bhd & Anor v Kwan Yun Hong @ Kuan Onn Hing & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO D22–1051 OF 2006
HASNAH MOHAMMED HASHIM J
18 APRIL 2012

Companies and Corporations — Directors — Fiduciary duties — Breach — Allegation of — Directors had not acted bona fide in the interest of the company — Whether defendants acted contrary to the interest of plaintiff and its subsidiaries — Whether breach of fiduciary duties and breach of trust by defendants — Whether established — Companies Act 1965 s 132

The third defendant had caused the second plaintiff to enter into a supply agreement with Ribuinsan (M) Sdn Bhd ('Ribuinsan') in 2011. Ribuinsan agreed to supply to the second plaintiff scrap recyclable ferrous metals. Between January to May 2002, the second plaintiff purchased the goods from Ribuinsan for the total cost of RM11,835,000. The aforesaid amount was paid by the second plaintiff by cash and cheques. Sometime on 8 April 2001, Ribuinsan notified the second plaintiff that invoices No A2031 and A2035 had been factored to PB International Factors Sdn Bhd ('PB'). The third defendant acknowledged the instruction to pay all payment due directly to PB but proceeded to pay the invoices directly to Ribuinsan. PB then instituted legal action against the second plaintiff to recover the said amount of RM4,387,500 together with interest and cost. On 30 July 2003, PB obtained judgment against the second plaintiff. The second plaintiff settled the said amount to PB. In the meantime, on or about 3 May 2002, the defendant caused the second plaintiff to return all the goods purchased. However, it was contended by the plaintiff that the defendants in breach of its duties, failed to take any appropriate action for the recovery of the sum of RM11,835,000 and the amount of RM4,387,500. Further, the Ribuinsan transaction was only brought to the directors' attention on 6 February 2004 as reflected in the minutes of the board of directors' meeting. Hence, the plaintiffs' claimed, inter alia (a) a declaration that the defendant and each of them as directors had been guilty of breach of fiduciary duty and breach of trust in relation to the first and second plaintiffs; and (b) the sum of RM16,222,500.

Held, dismissing the plaintiffs' application:

(1) The supply contract, invoices as well the letter dated 18 April 2002 confirming payment could not be evaluated and/or considered and must be disregarded because no efforts were made by the plaintiff to call the maker or to produce the originals (see paras 19–21).

(2) Further, in PW1's witness statement he had stated that a sum of RM11,835,500 was paid and that Ribuinsan acknowledged receipt of the payment for all of the four invoices totaling RM8,876,250 vide a letter but this letter was marked as ID and would have to be disregarded. However, no other evidence was tendered in respect of such payment. PW2, the Chief Financial Officer, also failed to produce any documents showing that the above sums were paid to Ribuinsan (see para 22).

(3) The first to sixth defendants had no knowledge of the Ribuinsan transaction until it was brought to the attention of the directors in the board meeting on 6 April 2004. There was no evidence tendered by the plaintiff to challenge this. PW3, the former general manager of the second plaintiff and reporting directly to the third defendant, confirmed during the cross-examination that the only person who knew of the Ribuinsan transaction was the third defendant. He also confirmed that the other directors were unaware of the transaction. Further, no evidence was adduced by the plaintiffs to prove that the factoring agreement which was signed by the third defendant, the PBIF transaction, was consented by the other directors. Hence, the plaintiffs had failed to prove the existence of the acknowledgment of the factoring agreement in respect of the invoices (see paras 26–29).

(4) No evidence was adduced by the plaintiffs that the defendants as directors had not acted bona fide in the interest of the company. Based on the evidence, the defendants as directors had exercised their powers in the interest of the plaintiffs. It would appear on the totality of the evidence and tested against contemporaneous documents that the plaintiffs had failed to show that there was such a breach of fiduciary duties by the directors (see paras 33–34).

[Bahasa Malaysia summary

Defendan ketiga telah menyebabkan plaintif kedua memasuki perjanjian bekalan dengan Ribuinsan (M) Sdn Bhd ('Ribuinsan') pada tahun 2011. Ribuinsan telah bersetuju untuk membekalkan kepada plaintif kedua scrap logam ferrous kitar semula. Antara Januari hingga Mei 2002, plaintif kedua membeli barangan dari Ribuinsan bagi jumlah kos sebanyak RM11,835,000. Amaun tersebut telah dibayar oleh plaintif kedua dengan wang tunai dan cek. Kira-kira pada 8 April 2001, Ribuinsan memberitahu plaintif kedua bahawa invois No A2031 dan A2035 telah dihantar kepada PB International Factors Sdn Bhd ('PB'). Defendan ketiga memperakui arahan untuk membayar kesemua bayaran hutang secara langsung kepada PB tetapi meneruskan membayar invois-invois terus kepada Ribuinsan. PB kemudian memulakan tindakan undang-undang terhadap plaintif kedua untuk mendapatkan amaun RM4,387,500 tersebut bersama-sama faedah dan kos. Pada 30 Julai 2003, PB mendapatkan penghakiman terhadap plaintif kedua. Plaintif kedua menyelesaikan jumlah tersebut kepada PB. Sementara itu, pada atau kira-kira

3 Mei 2002, defendan menyebabkan plaintif kedua untuk mengembalikan kesemua barang-barang yang dibeli. Walau bagaimanapun, adalah dihujahkan oleh plaintif bahawa defendan-defendan dalam pelanggaran tugas-tugas mereka, gagal untuk mengambil apa-apa tindakan yang sesuai bagi pengembalian jumlah RM11,835,000 dan jumlah RM4,387,500. Di samping itu, transaksi Ribuinsan hanya dibawa kepada perhatian para pengarah pada 6 Februari 2004 seperti yang ditunjukkan dalam minit lembaga mesyuarat pengarah. Oleh itu, plaintif mendakwa, antara lain (a) suatu perisytiharan bahawa defendan dan setiap seorang daripada mereka sebagai pengarah telah melakukan pelanggaran kewajipan fidusiari dan pecah amanah berhubung kepada plaintif pertama dan kedua; dan (b) jumlah wang RM16,222,500.

Diputuskan, menolak permohonan plaintif-plaintif:

(1) Kontrak bekalan, invois serta surat bertarikh 18 April 2002 mengesahkan pembayaran tidak boleh dinilai dan/atau dipertimbangkan dan tidak diambil kira kerana tidak ada usaha yang dibuat oleh plaintif untuk memanggil pembuat atau untuk mengemukakan salinan-salinan asal (lihat perenggan 19–21).

(2) Seterusnya, dalam kenyataan saksi PW1 tersebut dia telah menyatakan bahawa sejumlah RM11,835,500 telah dibayar dan bahawa Ribuinsan memperakui penerimaan pembayaran bagi kesemua empat invois berjumlah RM8,876,250 melalui surat tetapi surat ini telah ditanda sebagai ID dan tidak perlu diambil kira. Walau bagaimanapun, tiada keterangan lain dikemukakan berkenaan pembayaran tersebut. PW2, Ketua Pegawai Kewangan, juga gagal mengemukakan apa-apa dokumen yang menunjukkan bahawa jumlah tersebut telah dibayar kepada Ribuinsan (lihat perenggan 22).

(3) Defendan pertama hingga keenam tidak mempunyai pengetahuan akan transaksi Ribuinsan sehingga ia telah dibawa kepada perhatian para pengarah dalam mesyuarat lembaga pada 6 April 2004. Tiada bukti yang dikemukakan oleh plaintif untuk mencabar ini. PW3, bekas pengurus besar plaintif kedua dan melapor secara langsung kepada defendan ketiga, mengesahkan semasa pemeriksaan balas bahawa satu-satunya orang yang mengetahui transaksi Ribuinsan adalah defendan ketiga. Beliau juga mengesahkan bahawa pengarah lain tidak menyedari transaksi tersebut. Di samping itu, tiada bukti yang telah dikemukakan oleh pihak plaintif untuk membuktikan bahawa perjanjian pemfaktoran telah ditandatangani oleh defendan ketiga, transaksi PBIF, telah dipersetujui oleh pengarah-pengarah lain. Oleh itu, plaintif telah gagal untuk membuktikan kewujudan pengakuan perjanjian pemfaktoran berkenaan invois (lihat perenggan 26–29).

(4) Tiada bukti yang dikemukakan oleh pihak plaintif bahawa defendan sebagai pengarah tidak bertindak secara bona fide dalam kepentingan

syarikat. Berdasarkan keterangan, defendan-defendan sebagai pengarah telah menjalankan kuasa mereka dalam kepentingan plaintif. Ia akan kelihatan pada keseluruhan bukti dan diuji terhadap dokumen semasa bahawa plaintif-plaintif telah gagal untuk menunjukkan bahawa terdapat apa-apa pelanggaran tugas fidusiari oleh pengarah (lihat perenggan 33–34).]

Notes

For cases on fiduciary duties, see 3(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 252–290.

Cases referred to

Avel Consultants Sdn Bhd & Anor v Mohamed Zain Yusof & Ors [1985] 2 MLJ 209; [1985] CLJ 37 (Rep), SC (refd)

City Equitable Fire Insurance Company Limited, In re [1924] 1 Ch 407, CA (refd)

Ho Hup Construction Company Bhd v Bukit Jalil Development Sdn Bhd & Ors (No 2) [2012] 1 CLJ 649, HC (refd)

Pharmmalaysia Bhd v Dinesh Kumar Jashbhail Nagajibha Patel & Ors [2004] 7 CLJ 465, HC (refd)

PP v Datuk Haji Harun bin Haji Idris & Ors [1977] 1 MLJ 180 (refd)

Legislation referred to

Companies Act 1965 s 132

V Vishnu Kumar (Alvin John & Partners) for the plaintiff/appellant.

Venka Aru (Ven & Associates) D Krishna (Krishna Dallumah, Maniam & Indran) Darren Lai and Siti Nornadirah (OA) (Director General of Insolvency) for the defendant/ respondent.

Hasnah Mohammed Hashim J:

BACKGROUND

[1] The third defendant had caused the second plaintiff to enter into a supply agreement dated 11 December 2001 with Ribuinsan (M) Sdn Bhd (Ribuinsan). Ribuinsan agreed to supply to the second plaintiff scrap recyclable ferrous metals. Between January–May 2002 the second plaintiff purchased the goods from Ribuinsan for the total cost of RM11,835,000. The aforesaid amount was paid by the second plaintiff by cash and cheques.

[2] Sometime on 8 April 2001, Ribuinsan notified the second plaintiff that Invoices No A2031 and A2035 have been factored to PB International Factors Sdn Bhd ('PB'). The third defendant acknowledged the instruction to pay all payment due directly to PB but proceeded to pay the invoices directly to

Ribuinsan. PB then instituted legal action against the second plaintiff to recover the said amount of RM4,387,500 together with interest and cost. On 30 July 2003 PB obtained judgment against the second plaintiff. The second plaintiff settled the said amount to PB.

[3] On or about 3 May 2002, the defendant caused the second plaintiff to return all the goods purchased. However, it is contended by the plaintiff that the defendants in breach of its duties, failed to take any appropriate action for the recovery of the sum of RM11,835,000 and the amount of RM4,387,500.

[4] The plaintiffs' claim:

(a) a declaration that the defendant and each of them as directors have been guilty of breach of fiduciary duty and breach of trust in relation to the first and second plaintiffs;

(b) the sum of RM16,222,500;

(c) general damages;

(d) an order that all necessary proper accounts and inquiries for ascertaining what sums the defendants are liable to pay to the second plaintiff as compensation for the losses suffered by the second plaintiff as a result of the said acts of breach of fiduciary duty and breach of trust;

(e) all further and consequential proper accounts, inquiries and directions; and

(f) interest at the rate of 8% on the damages from the date of filing this writ of summons until the date of full realisation.

WHETHER THERE WAS A BREACH OF FIDUCIARY DUTIES AND BREACH OF TRUST BY THE DEFENDANTS

[5] In its statement of claim, the plaintiffs contended that the defendants as directors owed the plaintiffs the following duties:

(a) the duty to achieve a high standard of corporate governance;

(b) the duty to act bona fide in the interest of the company;

(c) the duty to give adequate consideration to matters for decision, and to keep discretions unfettered;

(d) to exercise powers only for proper corporate purposes;

(e) to act honestly and use reasonable care and diligence; and

A (f) to exercise the powers conferred in the interest of the plaintiffs and its subsidiaries.

[6] The plaintiffs further contended that the defendants have breached their fiduciary duty owed to the plaintiffs and its subsidiaries and have acted contrary to the interest of the plaintiffs and its subsidiaries.

[7] The plaintiffs withdrew its claim against the seventh, eigth, nineth, tenth, 11th and 12th directors.

[8] Section 132 of the Companies Act 1965 provides:

(1) A director of a company shall at all times exercise his powers for a proper purpose and in good faith in the best interest of the company.

(1A) A director of a company shall exercise reasonable care, skill and diligence with —

(a) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and

(b) any additional knowledge, skill and experience which the director in fact has.

[9] The fiduciary duties of directors of a company are to act in the best interest of the company. The Supreme Court in *Avel Consultants Sdn Bhd & Anor v Mohamed Zain Yusof & Ors* [1985] 2 MLJ 209; [1985] CLJ 37 (Rep) held:

> The law is clear that a director of a company is in fiduciary relationship with his company and as such he is precluded from acting in a manner which will bring his personal interest into conflict with that of his company ….

[10] As explained by Abdul Malik Ishak J in *Pharmmalaysia Bhd v Dinesh Kumar Jashbhail Nagajibha Patel & Ors* [2004] 7 CLJ 465:

… The law is simply this:

(1) that the director holds a fiduciary position in the company;

(2) and he must exercise the powers vested in him as a director in the interests of the company;

(3) and he must not exercise those powers as a director against the interests of the company; and

(4) in exercising those powers by virtue of his position as a director he must always do so for the general interests of the company and nothing else.

[11] Justice Mah Weng Kwai in *Ho Hup Construction Company Bhd v Bukit Jalil Development Sdn Bhd & Ors (No 2)* [2012] 1 CLJ 649 referred to the case of *In re City Equitable Fire Insurance Company Limited* [1924] 1 Ch 407 (CA) where Romer J said that:

> In discharging those duties, a director (a) must act honestly, and (b) must exercise such degree of skill and diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. But, (c) he need not exhibit. in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience; in other words, he is not liable for mere errors of judgment; (d) he is not bound to give continuous attention to the affairs of his company; his duties are of an intermittent nature to be performed at periodical board meetings, and at meetings of any committee to which he is appointed, and though not bound to attend all such meetings he ought to attend them when reasonably able to do so; and (e) in respect of all duties which, having regard to the exigencies of business and the articles of association, may properly be left to some other official, he is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

[12] Walter Woon on *Company Law* states that:

> Firstly, a director must act in what he honestly considers to be the company's interests and not in the interests of some other person or body. This is a director's main and overriding duty at common law; Secondly, a director must employ the powers and assets that he is entrusted with for proper purposes and not for any collateral purpose; Thirdly, a director must not place himself in a position whereby his duty to the company and his personal interests may conflict.

[13] The Ribuinsan transaction was only brought to the directors' attention on 6 February 2004 as reflected in the minutes of the board of directors' meeting (D14):

> 4.0 LITIGATION BETWEEN CHIN FOH TRADING SDN. BHD. AND PB INTERNATIONAL FACTORS SDN. BHD.
>
> The Chairman informed the Board Members that the main purpose of the Meeting was to brief the Board on the status of the material litigation between Chin Foh Trading Sdn Bhd ('Chin Foh Trading'), a wholly-owned subsidiary of Chin Foh Berhad, and PB International Factors Sdn Bhd ('PB Factors') and to discuss on the best possible course of action.
>
> Mr Alan Kuan Pek Seng informed that a Board Paper outlining details of the litigation and sequence of events leading up to the appeal made by Chin Foh Trading to the High Court against the Summary Judgment obtained by PB Factors, had been distributed to all the Board Members in the Board Meeting of 29 September 2003.

Board Members were informed that on 16 January 2004, Chin Foh Trading lost the appeal against the Summary Judgment in the High Court and have since made payment to PB Factors amounting to RM4,884,198.22, being settlement of the judgment amount.

Mr Daniel Siew wished to put on record a letter dated 22 July 2002 written by Messrs Chellam Wong disputing the claims made by PB Factors, which was not circulated to the Board Members for their information. In the same letter, Messrs Chellam Wong stated that it was acting for and representing the Board of Chin Foh Berhad, which Mr Daniel Siew denied was a true statement as the Board had not requested Messrs Chellam Wong to represent the Board at that point in time.

As the case is fraudulent in nature, Mr Pua Kah Ho cautioned the Board to consider carefully whether to pursue the case further by lodging a police report against Dato' Tan Leng Seng and his company, Ribuinsan (M) Sdn. Bhd., taking into consideration the repercussions and consequences it may have on Chin Foh Berhad and Mr Alan Kuan.

After due deliberation, the Board agreed on the following course of action:

(i) Chin Foh Trading to claim for the excess funds from PB Factors as soon as possible;

(ii) To make an appeal to the Court of Appeal against the Summary Judgment by PB Factors; and

(iii) To implement proper internal control procedures within the Group. The internal control procedures would first be vetted by the Executive Committee before tabling to the Board of Directors for final approval. For example, all invoices and delivery orders should only be acknowledged by the branch managers whereas notice of assignment on factoring facility should be signed/acknowledged by senior management from the head office.

The Board Members further resolved:

THAT Mr Anthony Kwan be and is hereby authorized to assist the Board in engaging a reputable law firm to handle the aforesaid litigation case and that all decisions pertaining thereto should be reported to the Executive Committee for confirmation/approval.

[14] DW1, DW2 and DW3 in their witness statements said that they were all unaware of the Ribuinsan transaction. In his witness statement DW1 said that:

I rely on the meeting of the Board of Directors (Exhibit D13) and on the 1st plaintiff's circular to the shareholders Exhibit (D12) stating the material litigation. I and the other directors, apart from the 3rd Defendant, did not know and were not informed of the suit earlier.

[15] He went on to explain that it was the third defendant who had informed

of the transactions to the directors at that board meeting. DW1 gave evidence that there was no board resolution to enter into Ribuinsan transaction or even to appoint Chellam & Wong as solicitors for the plaintiff to defend the case:

> … Alan Kuan had hid the suit from the other directors. He said his signatures were forged and showed us the chemist report.

[16] PW1 is the executive director of both the plaintiffs. PW1's evidence is based on company records. He was appointed as director in April 2006 and was not a director at the material time pertaining to the facts of the suit ie the Ribuinsan transaction. He gave evidence that at the material time, the director of the plaintiffs were the first defendant, who was the first plaintiff's director from 2 April 1997–23 July 2004 and of the second plaintiff from 15 July 1997–1 March 2005. The second defendant was a director of the first plaintiff from 2 April 1997–6 July 2006 and the executive chairman until 18 October 2005. The third defendant was MD of the first plaintiff from 2 April 1997–26 October 2005 and of the second plaintiff from 23 November 1994–16 December 2005.

[17] PW1 was appointed as a director after the Ribuinsan transactions and has no personal knowledge of the said transaction.

[18] Through PW1, the plaintiffs referred to the supply contract between the second plaintiff and Ribuinsan dated 11 December 2001 (IDP1) and the invoices (A2028, A2029, A2031, A2035) and corresponding delivery orders issue by Ribuinsan to the second plaintiff. These documents were collectively marked as IDP2. Letter from Ribuinsan dated 18 April 2001 confirming payments made in respect of the invoices was marked as IDP5.

[19] The supply contract, invoices as well the letter dated 18 April 2002 confirming payment were all marked as ID. Learned counsel for the defendant referred to the case of *Public Prosecutor v Datuk Haji Harun bin Haji Idris & Ors* [1977] 1 MLJ 180 where Abdoolcadeer J in his judgment said:

> … certain exhibits which have been put in the course of these proceedings for identification but have not in fact been proved as they should have been and are accordingly not exhibits in the strict sense and cannot therefore form part of the record in this case, namely, D41 and D43 which were both put in for identification only and which are the audited accounts and annual report of the Bank for the years 1973–74 and 1972 respectively. As these two exhibits have not been proved and properly admitted as such, they must in the ultimate analysis be discounted and I shall accordingly disregard references to them and also all oral testimony as well adduced in relation thereto.

[20] Therefore the aforesaid documents marked as ID could not be evaluated and/or considered by this court and must be disregarded.

[21] No efforts were made by the plaintiff to call the maker or to produce the originals.

[22] In PW1's witness statement he had stated that a sum of RM11,835,500 was paid and that Ribuinsan acknowledged receipt of the payment for all of the four invoices totaling RM8,876.250 vide a letter but this letter was marked as ID and would have to be disregarded. However, no other evidence was tendered in respect of such payment. PW2, the chief financial officer also failed to produce any documents showing that the said sum of RM11,835,500 and RM8,876,250 was paid to Ribuinsan.

[23] The defendants were unaware of the transactions and in their witness statements stated that they did not know of such a company. D10 is a letter from the first defendant' solicitor requesting for the details of the alleged cheques and the sum paid to Ribuinsan:

(a) what cheques and how much in cheques were paid to Ribuinsan;

(b) how much in cash was paid to Ribuinsan ….

[24] However no particulars were given as shown in D11 (letter from the plaintiffs' solicitor Messer HK Ang & Partners):

> We refer to your letter of 2.8.2006. The particulars sought therein are well within the knowledge of your clients.

[25] The plaintiffs failed to adduce any documentary evidence to prove that such payments were ever made.

[26] The first defendant as well as the second, fourth, fifth and sixth defendants had no knowledge of the Ribuinsan transaction until it was brought to the attention of the directors in the board meeting on 6 February 2004. There was no evidence tendered by the plaintiff to challenge this. PW3, Ong Poh Leng was the former general manger of the second plaintiff and reported directly to the third defendant. When he was cross-examined, he confirmed that the only person who knew of the Ribuinsan transaction was the third defendant. He also confirmed that the other directors were unaware of the transaction.

[27] The factoring agreement was signed by D3 (the PBIF transaction). The

factoring agreement was marked as IDP4. No evidence of consent by the other directors were adduced by the plaintiffs.

[28] I have also taken into consideration that IDP4 is a forged document. There are expert reports, namely:

(a) report by Siow Kwen Sia from forensic consultant (marked as D8);

(b) report by V Balasubramaniam, a forensic documentary examiner (marked as D9); and

(c) report from Makmal Forensik PDRM (marked as D16).

[29] Since the document was marked as ID, it could not be considered and would have to be disregarded. The plaintiffs have therefore failed to prove the existence of the acknowledgment of the factoring agreement in respect of the invoices.

[30] The PIBF action was commenced in 2002. The second defendant in his witness statement said he only knew of the PIBF sometime in 2003/2004 when he received a notice of demand. The second defendant then called for a board meeting which was convened on 6 February 2004. Furthermore there was a circular issued by the first plaintiff to the shareholders (D12) informing that the group was not engaged in any material litigation, claim or arbitration. It was further stated that the directors did not have any knowledge of any proceeding:

> 2. MATERIAL LITIGATION
>
> Save as disclosed below, the CFB Group is not engaged in any material litigation, claim or arbitration, either as plaintiff or defendant and the Directors of CFB do not have any knowledge of any proceedings pending or threatened against the CFB Group or of any facts likely to give rise to any proceedings which might materially affect the position or business of the CFB Group.

[31] The directors only knew of the PIBF action after the judgment was entered against the second plaintiff and payment was made to avoid any winding up proceedings being initiated.

[32] Furthermore the running of the day to day affairs of the company was carried out by the managing director, the third defendant. A director is justified in trusting officers of the company to perform all duties and entitled to rely on the judgment, information and advice of the officers so entrusted.

[33] The onus of proving a breach of fiduciary duty lies on the plaintiffs. No

evidence was adduced by the plaintiffs that the defendants as directors had not acted bona fide in the interest of the company.

[34] Based on the evidence the defendants as directors had exercised their powers in the interest of the plaintiffs. Therefore on the question whether the plaintiffs have successfully discharged the burden of proof on a balance of probabilities, I find that the plaintiffs fall short of this prerequisite standard. It would appear on the totality of the evidence and tested against contemporaneous documents, the plaintiffs have failed to show that there was such a breach of fiduciary duties by the directors.

CONCLUSION

[35] The plaintiffs have failed to prove on a balance of probabilities that the first, second, third, fifth and sixth defendants breached its fiduciary duties as directors.

Plaintiffs' application dismissed.

Reported by Ashgar Ali Ali Mohamed